

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
SPECIAL CIVIL APPLICATION No 7746 of 1996  
For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
CHATURJI MANGAJI THAKOR

Versus

-----  
COMMISSIONER OF POLICE

-----  
Appearance:

MR BP MUNSHI for Petitioner  
SERVED for Respondent No. 1

-----  
CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/10/96

ORAL JUDGEMENT

Heard learned advocate Mr. Satish Patel for Mr. B.P. Munshi, for the petitioner and Mr. Nigam Shukla, learned APP, for the respondents.

This Special Civil Application is directed against the detention order dated 18th April 1996, passed by the Police Commissioner, Ahmedabad City, whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985.

The detention order dated 18th April 1996 was executed on the same day, i.e. 18th April 1996 and since then the petitioner is under detention lodged at the District Jail, Bhavnagar.

The present Special Civil Application was filed

in this Court on 10th October 1996 and on 14th October 1996 rule returnable within two weeks was issued. However, so far, no reply has been filed by the respondents, nor has any affidavit been filed by the detaining authority.

The grounds enclosed with the detention order show that there were three criminal cases registered against the petitioner under the provisions of the Bombay Prohibition Act, out of which two are pending trial and in one case, police investigation was going on. After taking into consideration the allegations made in the three criminal cases, the detaining authority has referred to Lattahakand which had happened in the past, with which the petitioner was not concerned. The detaining authority has also referred to the evil consequences of consumption of country liquor and has found that the petitioner was engaged in the anti-social activities and he was a bootlegger. The detaining authority has also considered the statements of the witnesses with regard to incidents dated 29th March 1996 and 5th April 1996. The first witness has stated that he was given public beating by the petitioner considering him to be a police informant; a crowd had assembled when the witness raised an alarm; the petitioner ran after the members of the crowd with a knife, people ran helter-skelter; and atmosphere of terror was created. Another witness has stated that the petitioner came to him along with his associates with the stock of liquor and wanted to occupy his vehicle with the stock of liquor. When the witness resisted, he was given public beating by the petitioner; crowd was collected; the petitioner ran after the members of the crowd with a knife and the daily routine life of the people was disturbed. The detaining authority has mentioned that the petitioner was engaged in beating innocent persons and was engaged in anti-social activities. The witnesses have also requested that their identity be kept secret because they are afraid of the petitioner and, accordingly, privilege under Section 9(2) of the PASA has been claimed. The detaining authority has also noted that the proceedings of externment may not serve the purpose so as to prevent the petitioner from continuing his anti-social activities and, therefore, it was necessary to detain him.

The detention order is challenged on more than one grounds, but the learned advocate for the petitioner has kept his arguments confined to the question that, even if the allegations levelled against the petitioners have been taken to be true, they do not constitute a case

of breach of public order, and at the most it would constitute a case of breach of law and order.

I have considered the submissions made on behalf of both the sides. In view of the decision of this Court rendered on 4th October 1996 in Special Civil Application No. 3879 of 1996, it is clear that such allegations do not constitute a case of breach of public order. The allegations and the materials which have been relied upon by the detaining authority can at best constitute a case of breach of law and order. It is, therefore, apparent that the detention order has been passed not on the grounds which can be said to be germane to breach of public order. The detention order cannot be based on the ground of breach of law and order and, hence, the order of detention cannot be sustained in the eye of law.

Accordingly, this Special Civil Application is allowed. The impugned order dated 18th April 1996, passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner forthwith and set him at liberty, if not required in any other cases. Rule is made absolute.

\*\*\*\*\*

(swamy) \*\*\*\*